

CRIMINAL WRIT PETITION NO. 27 OF 2001

Shri Aronio Fernandes,
of major age, r/o House
no.330, Vaz Vaddo, Velim,
Salcete, Goa.

... Petitioner.

Versus

1. Rica Vaz, r/o House
No.359, Vaz Vaddo,
Velim, Salcete, Goa, and

2. Alisha Fernandes, through
mother and natural guardian,
Rica Vaz, r/o House No.359,
Vaz Vaddo, Velim,
Salcete, Goa.

... Respondents.

Shri M. S. Sonak, advocate for the petitioner.

Shri S. G. Bhobe, advocate for the respondents.

CORAM: D.G. DESHPANDE, J.

DATE: 30th January, 2003.

ORAL JUDGMENT

Heard Shri M. S. Sonak, learned counsel for the petitioner and Shri S. G. Bhobe, learned counsel for the respondents.

2. The respondent no.1 filed this petition for claiming maintenance for respondent no.2, who, according to her, was the illegitimate child of the petitioner and of respondent no.1. The Judicial Magistrate First Class, Margao, vide Order dated 30th September, 2000, awarded maintenance of Rs.300/- per month. This Order came to be confirmed by the learned Sessions Judge by Judgment dated 17th February, 2001. Hence, this Revision Application.

3. In order to prove that the respondent no.2 was born from respondent no.1, respondent no.1 examined herself in Court, produced registration of birth certificate and certificate of baptism at the Church of the Holy Spirit, Margao, dated 26th July, 1992. The case of the petitioner was of simple denial. After considering the oral and documentary evidence, both the courts below awarded maintenance to the respondent no.2.

4. Shri Sonak drew my attention to the observations of the learned Judicial Magistrate First Class, Margao, wherein the Magistrate held that Exhs. P.W.1/A and 1/B, i.e birth certificate and baptism certificate being public documents, were above suspicion, unless they are declared null and void by the competent Court. He contended that these observations are contrary to law and there is no provision in the Evidence Act that a particular document being a public document shall be above suspicion, or can be treated as above suspicion, unless the document is declared null and void by the competent authority. He contended that even if these documents have presumptive value, the presumption is rebuttable and these documents are not conclusive proof of the facts stated therein.

5. There is legal force in what Shri Sonak contends. The observations and finding of the Judicial Magistrate First Class in that regard are wrong. But even

then there are no reasons to interfere with the orders of both the Courts below. Respondent no.1 had proved her case by coming to the Court boldly, has narrated the manner in which intimacy was developed between herself and the petitioner and how she took the help of the doctor and how the child was born. Her evidence is otherwise properly appreciated by both the Courts below. Therefore, even if the finding by the Magistrate as stated above is wrong, there are no reasons to interfere with the Order.

6. Hence, this Criminal Writ Petition is dismissed.
Rule discharged.

D. G. DESHPANDE, J.

mc.